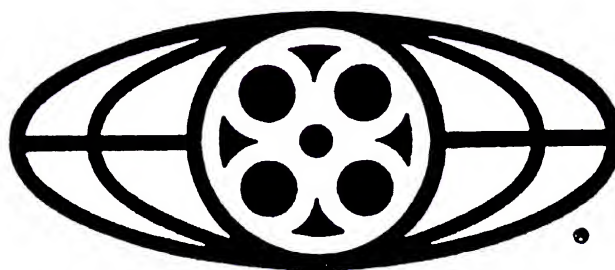


STATEMENT
of
JACK VALENTI
PRESIDENT & CHIEF EXECUTIVE OFFICER
of the
MOTION PICTURE ASSOCIATION
OF AMERICA



MOTION PICTURE ASSOCIATION OF AMERICA

Before the
Subcommittee on Science, Technology and Space
of the
Senate Committee on Commerce, Science, and Transportation

S. 1726, The Promotion of Commerce Online
in the Digital Era Act of 1996
Pro-CODE

June 12, 1996

Testimony of

MR. JACK VALENTI

PRESIDENT AND CHIEF EXECUTIVE OFFICER

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RE: S. 1726, The Promotion of Commerce Online in the Digital Era Act of 1996

Thank you for this opportunity to present the perspective of the Motion Picture Association of America on the importance of encryption, the roles of the government and the private sector, and specifically on S. 1726, the Pro-CODE Act of 1996.

At the outset, let me summarize the four main points of my testimony this morning.

First, the motion picture industry enthusiastically supports the rapid development of electronic commerce over computer networks. In fact, we believe that our copyrighted products will be a key driver of that development. But motion picture companies cannot and will not make those products fully available in electronic commerce unless we can fully and efficiently protect our intellectual property from theft.

Second, encryption is an essential tool for bringing digital entertainment products into the mainstream of electronic commerce. The health of our industry, and the key role it plays in the U.S. economy, will depend to an

increasing degree upon the availability of a wide range of flexible and effective encryption technologies. Any legal impediments to our ability to acquire and use these technologies will hamper our continued growth and economic vitality.

Third, the digital marketplace is inherently a global marketplace. Excessively tight export controls on encryption compromise our ability to deliver digital entertainment products to eager viewers around the world. Those controls must be relaxed to the extent consistent with national security needs.

Finally, while the federal government should reduce its role in regulating the use and export of encryption products and services, we need Congress to be actively engaged on a number of closely related issues. If electronic commerce is to succeed -- if the information superhighway is to realize its full potential -- we must achieve consensus on technological protections for digital video; outlaw trafficking in protection circumvention devices and services; and provide a digital update to our copyright laws.

Chairman Burns, you have targeted precisely the right issue in the title of your legislation: the Promotion of Commerce On-Line in the Digital Era. For many years, the federal government played an important role in the development of computer networks. It financed research, subsidized development, and sponsored pilot projects that demonstrated the capabilities and potential of this exciting new communications medium. Indeed, the Internet itself began as a link among Defense Department computers for research, development and national security purposes.

But as the Internet has undergone a sea change over the past couple of years, so the government role in this "network of networks" must be

reinvented as well. The Internet today, no longer the sole domain of scientists and scholars, is poised to break through to commercial maturity, as a vibrant marketplace for the purchase and sale of a limitless spectrum of goods and services. The key challenge today for the federal government is how to promote and facilitate this rapid evolution into electronic commerce.

The motion picture industry will play a key role in this evolution. Producers are already deeply immersed in using advanced digital information infrastructure in the entire creative process of producing motion pictures. Digital delivery of movies to the general public, in the form of the Digital Video Disc (DVD), is literally around the corner. And advances in compression technologies and expansions of available bandwidth are bringing us commercially viable digital video, transmitted over cable, by terrestrial broadcast, via satellite, and over digital networks, direct to living rooms across the country and around the world.

In fact, as the tempo and volume of traffic on the information superhighway ramps up, the motion picture industry will not just be hitching a ride; we plan to have our foot firmly on the accelerator. Of course, the public will be in the driver's seat and gripping the steering wheel.

No one really knows what will be the "killer applications" for these digital delivery networks. But one thing we're pretty sure of: is the general public isn't interested in high-speed switches, fiber-optic cables, and digital compression technologies for their own sakes. The public is hungry for content: information, education, and entertainment, delivered to them conveniently, on demand, in high quality formats that are easy to use. Public demand will spur the continued growth of mass markets in computer hardware and software, consumer electronics appliances, and telecommunications technologies; and we are confident that the demand for U.S. filmed entertainment will have pride of place in that dynamic.

How can we best set that dynamic in motion now? What is the main obstacle to full participation by the motion picture industry -- and, indeed, by all the copyright-based industries -- in electronic commerce? Clearly, one hurdle looms largest: the threat which digital distribution poses to the fundamental value of our business -- our intellectual property.

The advent of electronic commerce poses a special conundrum for industries, like ours, whose stock in trade is the expression of ideas and the manifestation of creativity. The opportunities are staggering -- to reach new audiences, to revivify old products, to reduce the obstacles of time and space that impede our entry into far-flung markets. But the same technologies that offer these opportunities also, simultaneously, present a fundamental threat: copyright piracy on an unprecedented scale.

Digital copying is swift, easy, inexpensive, and of perfect quality. Digital delivery -- at least potentially -- shares the same characteristics. When these activities are undertaken on behalf of, and with the authorization of, the creators of copyrighted materials, the prospects are alluring. But the digital networked environment also puts these same awesome capabilities in the hands of pirates and thieves of intellectual property, who will surely use them to undermine legitimate markets for our products, reaping for themselves the harvest that creators have so painstakingly sown.

In the short run, digital piracy will be a disaster for creative artists and for those who invest their money, time and expertise to develop and distribute their productions. In the long run, the circle of losers will be much larger. If the electronic marketplace comes to be dominated by thieves, then legitimate businesses will never bring their wares there; and all those who count on the success of these exciting new means of communication and dissemination of works of authorship will come home from the digital bazaar empty-handed.

Of course, piracy is not a new problem for our industry. It is, today, a multi-billion dollar headache, not only for motion pictures, but also for sound recordings and music, for business and entertainment software, and for text materials of all kinds. But the potential losses from digital piracy -- from pirate networks with worldwide reach -- could dwarf even these colossal figures.

The first wave of this pirate tide is breaking across our bow today, as compact disks from pirate factories in China flood markets in Asia and throughout the world with unauthorized copies of recordings, software, data -- and, yes, motion pictures as well. Today's digital pirates must smuggle their contraband across the border into Hong Kong in vegetable carts. Think how much more devastating the problem will be once pirate copies can be uploaded to a global network with the touch of a button.

There are a number of legal and educational tools that we can use to fight digital piracy, and of course we are already using them vigorously. But technological weapons are especially important in our anti-piracy arsenal. They enable us to prevent or at least impede piracy, not simply to detect, pursue or punish it after it has already occurred. And in the digital environment, the primary technological weapons involve encryption -- the scrambling of the zero's and one's that make up every kind of digital copyrighted work.

The hothouse of research and development into technological protections for copyrighted material is beginning to bear some fascinating fruit. One approach uses electronic envelopes, in which the zero's and one's making up a copyrighted motion picture could be sealed, making tampering difficult to carry out and impossible to hide. Another approach calls for "watermarking" the material, so that even a fragment of illegally purloined data could be traced

back to its source. Every approach has its strengths and weaknesses; a host of variables -- cost, convenience, reliability, robustness -- have to be considered, and, given the wide variety of copyrighted material that might move in electronic commerce, one size is extremely unlikely to fit all. But nearly every approach relies, to a greater or lesser degree, on some kind of encryption.

Why does the motion picture industry need strong encryption? Ironically, it is not so that we can prevent access to our products, but so that we can build a system that allows for the widest possible access. In the pre-release stage, of course, studios need very tight security; we have to prevent pirates from sabotaging the crucial early box office returns through unauthorized release of unfinished versions of a movie, a scenario that has unfortunately already occurred. Once a film is released, however, our goal is not to prevent access, but to manage it. By carefully managing access, we provide consumers with a wide variety of choices as to when, where, how and at what price, video entertainment is available to them.

This is not a new challenge, of course. But in an all-digital environment, in which one instance of unauthorized access could quickly lead to the proliferation of high-quality pirate copies around the world, the stakes are higher than ever. Encryption is an essential ingredient in maintaining the productivity and profitability of the U.S. film industry in the fast-changing marketplace for copyrighted works.

To find the optimal solutions to the threat of digital piracy, the motion picture industry needs access to the broadest available range of encryption technologies, products and services. Any government actions to restrict, regulate, or ration the options in this arena runs at cross purposes to our prospects for using new digital delivery mechanisms for our distribution of creative works.

So we commend you, Mr. Chairman, for casting a cold eye on current restrictions on the development, acquisition or use of encryption. We encourage you to work with your colleagues to clear out the legal underbrush, so that businesses like ours, working with their technology partners, can focus on what solution works best for copyright owners, network operators and other distributors, and most importantly, for consumers. In other words, the best thing government can do to promote this kind of electronic commerce is to ease up on regulation of encryption and let technology and the marketplace work their magic. That is the strategy best calculated to encourage full participation by our industry in the world of electronic commerce.

"The world of electronic commerce" is not an empty phrase. This new digital marketplace is inherently a global one. Computer networks like the Internet blur national boundaries and threaten to obliterate the idea of territorial markets. This fact poses a fundamental challenge to the motion picture industry, which has grown up on the commercial and legal foundation of the concept of territorial marketing. Of course, it also challenges the notion that the federal government can rely upon an export control regime to regulate access to encryption technology.

The effort to cabin the more advanced encryption technologies within the borders of the United States carries with it a certain undercurrent of futility. Companies are looking for global solutions to their security problems. Surely this is true in our industry, which is proud of its role as one of America's biggest export earners. How likely is it that a digital video product would be released with strong encryption protection in the U.S., but with weaker technological armor in foreign markets, including those in which piracy is even more of a threat?

Mr. Chairman, I emphatically do not want to give the impression that the only thing the federal government can do to help protect American intellectual property in the new digital marketplace is to butt out. We do believe that, in general, less government regulation of encryption technology will promote the growth of electronic commerce in motion pictures and other copyrighted works. But there are some closely related areas where we very much need the help and active engagement of Congress. I would be remiss if I did not mention three of these before I conclude.

First, sometimes we get so enamored of what is just over the horizon that we overlook what's right on our doorstep. Digital delivery of video through computer networks is not far off: but digital delivery of video on a small plastic disc is virtually here. As I mentioned earlier, we are literally on the threshold of a tremendously exciting new product: the Digital Video Disc (DVD). Within the next few months, this new technology will start to appear on store shelves, offering the prospect for bringing the fruits of American creativity and imagination into millions of American homes with unprecedented quality and convenience. The technological standards have been set; the production and distribution channels are being readied; the only remaining issue involves protection of intellectual property.

The MPAA has worked long and hard, with our colleagues in the consumer electronics industries and others, to develop a DVD policy solution that balances the vital interests of copyright proprietors with the legitimate concerns of consumers. We are now working to develop a consensus approach that will attract the support of the computer hardware and software industries as well. It is clear to us that encryption standards and protocols are the key element in a consensus solution, so there is a close relationship between the DVD issue and the legislation before the Subcommittee today.

Second, as important as encryption technology is, it is not the complete solution to the problem of protecting intellectual property in electronic commerce. If we have learned nothing else from the past decade, we should know that for every lock, there is a key; for every encryption protection, there is a hack, and a hacker who will find it. We need not simply the freedom and flexibility to adopt the protection system that best meets our needs, but also the legal tools to pursue and punish those who, for sport or profit, would seek to circumvent or nullify these protections. That is why MPAA enthusiastically supports legislation to outlaw trafficking in devices or services that are aimed at unauthorized decryption, steaming open electronic envelopes, obliterating digital watermarks, or otherwise circumventing technological protections without the authority of the copyright owner or the law. This is not a novel concept -- it builds on long-standing prohibitions against descrambling of satellite signals, theft of cable services, and the like -- but it is past time to apply it more broadly across the copyright world. We urge Congress to adopt such legislation as soon as possible, whether as part of digital copyright legislation (such as S. 1284) or in another context; and we applaud the Administration for its efforts to advance this concept in international fora such as the World Intellectual Property Organization. In this effort, too, we look forward to the cooperation and support of the computer software and hardware industries.

Finally, while the U.S. copyright law is, for the most part, well positioned to meet the challenges of the digital age, a few modest updates to the statute are in order. MPAA is disappointed in the slow progress on the NII Copyright Protection Act (H.R. 2441/S. 1284), and on related legislation to plug loopholes in the criminal infringement laws (such as S. 1122, or Title XIV of S. 1495). We are particularly concerned by the widespread misinformation that depicts this minimalist legislation as a radical re-write of copyright. To our eyes, this overblown reaction to the bill underscores the need for its prompt enactment, to send a clear signal that respect for intellectual property is a cardinal "rule of the road" for the information superhighway.

In this regard, while I have no other specific comments to offer on S. 1726, I would urge the subcommittee to re-examine Section 5(c)(2)(A)(ii), which appears to equate the Internet with the public domain. As a matter of law, that equation is incorrect; the assumption that anything appearing on the Internet is outside the realm of copyright protection is a dangerous fallacy that Congress should be explicitly correcting, not inadvertently encouraging. If, as a matter of fact, that equation becomes a self-fulfilling prophecy, then the Internet will have failed to live up to its potential; "electronic commerce" will be a vague hope, not a reality; and all of us -- businesses, consumers, all those who are touched by the new digital networks -- will be the poorer for it.

Mr. Chairman, thank you again for your leadership in introducing legislation on this important issue, and for giving the Motion Picture Association of America this opportunity to testify.

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